

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:MANIPUR:
TRIPURA:MIZORAM & ARUNACHAL PRADESH)
SHILLONG BENCH

W.P.(C) No. (SH)363 of 2010

Smti Ksiar Massar
w/o Late Topson Basumatry
r/o Lumjarain Suchen Village,
Khliehriat, PS
Jaintia Hills District, Meghalaya : Petitioner

versus

1. The Chairman,
Meghalaya Energy Corporation Ltd.,
Shillong

2. The Secretary,
Meghalaya Energy Corporation Ltd.,
Shillong

3. The Chief Executive Officer,
Meghalaya Energy Corporation Ltd.,
Jowai Division, Meghalaya

4. The Executive Engineer
(Revenue) Meghalaya Energy Corporation Ltd.,
Jowai Division, Meghalaya

5. The Executive Engineer
Meghalaya Energy Corporation Ltd.,
(Distribution), Khliehriat
Division, Meghalaya. : Respondents

B E F O R E
THE HON'BLE MR JUSTICE T VAIPHEI

For the petitioner	: Mr HL Shangreiso, Adv
For the respondents	:Mr. KS Kynjing, Sr. Adv. Mr H Kharmih, Adv
Date of hearing	: 22.08.2011
Date of Judgment and Order	: 21.10.2011

JUDGMENT AND ORDER

The petitioner, in this writ petition, is seeking the intervention of this Court for payment of compensation by the respondent-Corporation for the death of her husband, late Topson Basumatry and her minor-daughter namely, late Emon Massar, respectively due to electrocution.

2. The facts leading to the filing of the writ petition, as pleaded by her, may be briefly referred to at the outset. The respondents are the officials of the Meghalaya Energy Corporation Ltd. ("the Corporation" for short), which is a statutory body. The Corporation is engaged in supplying power to the consumers of Jaintia Hills District, Meghalaya. According to the petitioner, she and her husband constructed one Assam Type house covered with tin-roof at Lumjarain Suchen village, Khlieriat P.S. Jaintia Hills District in the year 2005. The Corporation supplied electricity connection to their house, for which they regularly paid the bills. There is a public road between the Electric pole and their house, but the Corporation, instead of making straight connection from the said pole, had made the connection of live wire transmission over the CI sheet/tin roof of their house. It is alleged by the petitioner that on 7-6-2010 at about 12 PM, the live wire got snapped from the post and fell over and touched the CI sheet/tin roof of their house and that when her husband, aged about 50 years, without knowing this, took their minor-daughter, aged about two and half years old to the outside toilet to attend to call of nature, they came into contact with the said live wire and met an instantaneous death by electrocution. The case was immediately investigated by the Khleiriat

Police while the dead bodies of her husband and the minor child were brought to Khleiriat Civil Hospital for post mortem examination. The result of the post mortem examination indicated that the injuries found on the death bodies of her husband and her child were caused by electrocution.

3. It is also the case of the petitioner that the electrocution leading to the death of her husband and child was caused by the gross negligence on the part of the Corporation. Her deceased husband left behind him surviving the petitioner and their four other minor-children, who are his dependants. She immediately approached the respondent authorities to inquire into the cause of accident and pay her monetary compensation for the death of her husband and her minor-child for their sustenance, but they refused to do so. It is the contention of the petitioner that the respondent authorities were aware at the time of installing the energy connection that allowing the live wire to run over their CI sheet/tin roof house would pose great danger to the dwellers of the house and that having not taken proper precaution/safety and carelessly installing the electric connection, they are accountable for the electrocution and consequential death of her husband and her daughter. The fact that the live wire got snapped at mid-night and fell over the house of the petitioner when there was not even heavy storm betrays gross negligence on the part of the respondent authorities: in any case, the doctrine of strict liability is attracted to this case. According to the petitioner, her husband and her daughter cannot be blamed for not knowing the falling of the snap live wire over their roof: it is the respondent authorities who should have taken all reasonable

steps to ensure that commercial installation of electricity do not pose danger to the public. It is contended by the petitioner that her husband was the only bread earner in their family consisting of herself and her five minor children and was earning ` 6,000/- per month through agricultural income at the time of his death. She is thus entitled to a compensation of `10,00,000/- and another sum of ` 5,00,000/- by way of compensation for the death of her minor daughter: the respondent authorities are, therefore, liable to pay the compensation on the principle of strict liability.

4. The writ petition is opposed by the respondent authorities, who have filed their affidavit-in-opposition. It is the case of the respondents that the petitioner is a Below Poverty Line (BPL) consumer for which electricity connection was provided under RGGVY Scheme bearing Sl. No. 28, No. 2484, House No. KHL(SCL) 7 and BPL Meter No. 157968, but billing for the petitioner has not been done till date. The LT Line did not pass directly over the tin roof of the petitioner, but the LT Pole was erected 10 metres away from her house. According to the respondents, they learnt from the village headman that on the night of 6th June, 2010 at around 10 PM, there was a cyclonic storm and the PVC wire which was provided for electric connection to the house of the petitioner got snapped and became entangled with her tin house, which resulted in the electrocution of her husband and her minor daughter on that night. The Assistant Executive Engineer, RE Construction Sub-Division, Khliehriat ("the AEE") of the Corporation confirmed in his report dated 7-6-2010 that the cause of death of the husband and minor-daughter of the petitioner was caused by electrocution, which, in

turn, had been caused by act of nature and not due to any bad or deliberate intention on the part of the respondent: the respondents cannot be held liable for act of nature and for circumstances beyond their control. On receipt of the information in the morning of 7th June, 2010, the AEE rushed to the accident site and conducted an enquiry and thereafter submitted his report dated 7-6-2010 to the Senior Electrical Inspector. The petitioner was advised during the inquiry to submit the post mortem report to them through the headman of the village along with the enquiry report, but that was not done. Instead, she preferred to file this writ petition. Thus, the principal stance taken by the answering authorities is that the electrocution causing the death of the two deceased was due to natural calamity and not due to their negligence, much less, gross negligence. The petitioner filed her reply affidavit, the contents whereof are denial of the averments in the writ petition and/or virtually a repetition of her writ petition, and the same, for the sake of brevity, need not be referred to.

5. The principal contention of Mr. KS Kynjing, the learned senior counsel for the respondent-Corporation, while raising objection against the maintainability of the writ petition, is that the writ petition involves a complicated question of fact in the light of the denial by the respondent-Corporation of their negligence in the electrocution of the both the deceased, and is, therefore, liable to be dismissed at the very threshold. He refers to the averments of the respondent-Corporation in paragraphs 9, 10 and 13 of their affidavit where there were denials that the LT line directly passed over the tin roof of the dwelling house of the petitioner: on the contrary, it was asserted that the LT pole was erected

10 metres away from that house. It was also specifically asserted by the answering respondents, submits the learned senior counsel, that due to cyclonic storm occurring in that area on the fateful night, the PVC wire got snapped and got entangled the tin roof of the house of the petitioner and the incident was thus purely caused by an act of nature and due to circumstances beyond human control. He emphasizes time and again that even on merit, the writ petition is liable to be dismissed inasmuch as no clinching evidence could be produced by the petitioner to substantiate her allegations that the death of her husband and daughter was caused by the negligence of the Corporation or of the liability of the Corporation. He, therefore, strenuously urges that the writ petition is liable to be dismissed, and the petitioner may be directed to approach a competent civil jurisdiction to redress her grievances. He relies on the decision of the Apex Court in ***HSEB v. Ram Nath, (2004) 5 SCC 793*** to buttress his contentions. Per contra, Mr. Aso, the learned counsel for the petitioner, contends that the doctrine of strict liability enunciated in ***Rylands v. Fletcher (1861-73) ALLER Rep 1***, is applicable to the facts of this case as no new and better principle is evolved or a different situation created by legislation. It is submitted by the learned counsel that the respondent-Corporation clearly admitted that the domestic wire in question got snapped and got entangled with the tin roof of the dwelling house of the petitioner due to storm and also that the husband and daughter of the petitioner were electrocuted while coming into contact with the snapped wire and under those circumstances, the onus of proof that the respondent-Corporation was not guilty of negligence, has shifted to them and having not discharged this onus, there is no difficulty in applying the

“Rule in *Rylands v. Fletcher*”. He, therefore, maintains that the writ petition is maintainable and the relief claimed be granted in the interest of justice, equity and good conscience.

The “Rule in *Rylands v. Fletcher*” came up for consideration before the Apex Court in ***Kaushnuma Begum case*** (*supra*) and was approved in that decision by holding that the Constitution Bench in ***MC Mehta v. Union of India*** [(1990) 1 SCC 613] did not foreclose the application of the rule as a legal proposition. The rule is explained by Blackburn, J., in the following manner:

“[T]he rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it in peril, and, if he does not do so, he is prima facie answerable for all the damages which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff’s default, or perhaps, that the escape was the consequence of vis major, or the act of God: but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.”

It is interesting to note that in the celebrated work “*Winfield on Tort*”, by bringing out even a chapter on this rule, it has been observed that:

*“over the years *Rylands v. Fletcher* has been applied to a remarkable variety of things: fire, gas, explosions, **electricity**, oil, noxious fumes, colliery spoil, rusty wire from a decayed fence, vibrations, poisonous vegetation”.*

(Bold letters mine)

The Apex Court apparently applied the “Rule of *Rylands v. Fletcher*” in ***Ram Nath case*** (*supra*) when it held at paragraph 6 of the judgment that:

“6. The appellants are carrying on a business which is inherently dangerous. If a person were to come into contact with a high-tension wire, he is bound to receive serious injury and/or die. As they are carrying on business which is inherently dangerous, the appellants would have to ensure that no injury results from their activities. If they find that unauthorised constructions have been put up close to their wires it is their duty to ensure that that construction is got demolished by moving the appropriate authorities and if necessary, by moving a court of law. Otherwise, they would take consequences of their inaction. If there are complaints that these wires were drooping and almost touching houses, they have to ensure that the required distance is kept between the houses and the wires, even though the houses be unauthorised. In this case we do not find any disputed question of fact.”

6. Once the application of the “*Rule of Rylands v. Fletcher*” is approved by the Apex Court, there is no difficulty in holding that the burden of proof that there was heavy storm on the fateful night which resulted in snapping of the live wire touching the tin roof of the dwelling house of the petitioner or that as they were carrying on a business which is inherently dangerous, they had done everything in their power to ensure that the live wires installed by them in an inhabited area like the village of the petitioner did not result in injury to its inhabitants or that the live wires installed by them could not be easily snapped by normal wind or that the petitioner and/or her deceased some how were responsible to the electrocution resulted in the death of her deceased husband and their minor daughter. In the instant case, it can be safely said that it is not within the power of the respondent-Corporation to produce evidence to establish that there was heavy cyclonic storm on the fateful night: this is all the more so in the teeth of denial by the petitioner that there was cyclonic storm on that night. Once the principle of strict liability is held applicable in a case, the burden of proof is heavy for the defence. An illiterate villager like the petitioner

cannot be expected to prove her case like the respondent-Corporation: it is concededly an unequal battle of litigants in a case of this nature. That is why the doctrine of strict liability comes in handy to enable this Court to do justice to poor and rustic villager like the petitioner herein. As the respondent-Corporation have not discharged the burden of proof lying upon them, I have no alternative but to hold that the husband and minor daughter of the petitioner died of electrocution, which, in turn, was caused by the negligence of the respondent-Corporation. Coming now to the quantum of compensation, there is no dispute that the petitioner and her four other minor-children were depending on the meagre agricultural income of the deceased, who was only 52 years old at the time of his death and was expected to live for another 20 years. One cannot overlook the plight of his dependant family members. A widow with her four minor-children have been left to fend for themselves. There is no prospect of the widow getting gainful employment to maintain herself, let alone, maintaining her minor-children. It is, therefore, a fit case for invoking the equity jurisdiction of this Court under Article 226 of the Constitution. Considering the matter from all its aspects, the ends of justice will be met if a compensation of ` 2,00,000/- for the death of her deceased husband and another sum of ` 75,000/- for the death of her minor-daughter are awarded to the petitioner for her sustenance and for the maintenance of her four minor-children.

7. For the afore-mentioned reasons, this writ petition is allowed. The petitioner is entitled to a compensation amounting to (i) ` 2,00,000/- (Rupees two lakhs) only for the death of her deceased

husband and (ii) another sum of ` 75,000/- (Rupees seventy-five thousand)only for the death of her minor-daughter, from the respondent-Corporation for their negligence. The respondent-Corporation is, therefore, directed to pay the amounts to the petitioner within a period of two months from the date of receipt of this judgment. If no payment is made within the stipulated period, they shall have to pay interest at the rate of 12% per annum with effect from two months thereafter.

JUDGE

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